THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No.32406 of 1997

Dated: 12.02.2007

Between:

Rangmahal Theatre, Guntur.

... PETITIONER

AND

The Government of A.P., rep.by its Secretary, Hyderabad, and another.

...RESPONDENTS

THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No.32406 of 1997

ORDER:

The petitioner, which is a theatre, approached this Court and filed the present writ petition with the following prayer:

> *"For the reasons stated in the accompanying affidavit, the petitioner herein prays that this Hon'ble Court may be pleased to declare the actions of the First respondent in issuing the Memo No.23817-GENL.A2/97-1, dated 26-6-1997 as illegal, violative of principles of the natural justice and issue a order or direction more particularly one in the nature of WRIT OF CERTIORARI Quashing the Memo No.23817-GENL.A2/97-1, dated 26-6-1997 and consequently directing the First Respondent to dispose the Appeal filed by the Petitioner on 17-6-1997 on merits and to pass such other orders as this Hon'ble Court may deems fit and proper in the circumstances of the case."*

The brief facts of the case are as under:

The petitioner is a licenced theatre. On 20.06.1996, second respondent issued a show cause notice to the petitioner to explain as to the violation of the conditions of the licence. However, by order dated 31.07.1996, second respondent, having held that there was violation of the conditions, directed the petitioner to pay penalty of Rs.10,000/-. The said order was served on the petitioner in the month of January, 1997, and the petitioner paid the penalty on 27.01.1997 itself. Due to health problems, the Managing Partner of the petitioner, who represents the petitioner, was able to file appeal with delay i.e., in June, 1997, and also prayed for condonation of delay in filing the appeal. First respondent dismissed the appeal under the impugned memo dated 26.06.1997 on the ground that the same was barred by limitation, without giving opportunity to the petitioner. Aggrieved by the same, the present writ petition is filed.

Heard both the counsel and perused the material on record.

As seen from the record, the original authority i.e., the Joint Collector, second respondent, by proceedings 931/96/C1 dated 23.12.1996 directed the petitioner to pay an amount of Rs.10,000/- towards penalty, against which a statutory appeal is provided for, which was availed by the petitioner and as there was delay in preferring the appeal, the petitioner also sought for condonation of delay. However, first respondent, appellate authority, dismissed the appeal on the ground that the appeal was barred by limitation. Having regard to the facts and circumstances of the case, this Court is of the considered opinion that the

appellate authority, first respondent, ought to have condoned the delay

instead of dismissing the appeal and ought to have entertained the appeal, as the petitioner while preferring the appeal sought for condonation of delay.

Accordingly the writ petition is allowed, delay is condoned and the appellate authority, first respondent, is directed to entertain the appeal and pass appropriate orders after giving sufficient opportunity to the petitioner as well as the respondents. No costs.

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(GOPALA KRISHNA TAMADA, J)

12th February, 2007.
ghn